

§ 400.208

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can at any time reject an application that does not meet these requirements.

(b) *Evaluation criteria.* Applications that are determined to be eligible pursuant to paragraph (a) of this section shall be subject to a substantive review by the Board based upon the following evaluation factors, in order of importance:

(1) The ability of the Borrower to repay the loan by the date specified in the Loan Document, which shall be no later than December 31, 2005. Evaluation of this factor will consider the prospective earning power of the Borrower. An essential and necessary element of the Board's evaluation of whether this criterion is satisfied is whether the applicant has committed to undertake significant efforts to eliminate or reduce economically unviable capacity;

(2) The adequacy of the proposed provisions to protect the Government, including sufficiency of Security, the priority of the lien position in the Security, and the percentage of Guarantee requested; and

(3) Adequacy of the underwriting analysis performed by the Lender in preparing the application and the ability of the Lender to administer the loan in full compliance with the requisite standard of care set forth in § 400.211(b).

(c) *Decisions by the Board.* Upon completion of the evaluation of an application and as soon as possible after its receipt, the Board will approve or deny an eligible application that is timely received under this Program. The Board shall notify the Applicants and the Borrower in writing of the approval or denial of an application as soon as possible. Approvals for loan Guarantees shall be conditioned upon compliance with § 400.208.

[64 FR 57933, Oct. 27, 1999, as amended at 65 FR 70294, Nov. 22, 2000; 66 FR 53080, Oct. 19, 2001]

§ 400.208 Issuance of the Guarantee.

(a) The Board's decisions to approve any application for, and extend an offer of, guarantee under § 400.207 is conditioned upon:

(1) The Lender and Borrower obtaining any required regulatory or judicial approvals;

(2) The Lender and Borrower being legally authorized to enter into the loan under the terms and conditions submitted to the Board in the application;

(3) The Board's receipt of the Loan Documents and any related instruments, in form and substance satisfactory to the Board, and the Guarantee, all properly executed by the Lender, Borrower, and any other required party other than the Board; and

(4) No material adverse change in the Borrower's ability to repay the loan between the date of the Board's approval and the date the Guarantee is to be issued.

(b) The Board may withdraw its approval of an application and rescind its offer of Guarantee if the Board determines that the Lender or the Borrower cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the offer.

(c) Only after receipt of all the documentation, required by this section, will the Board sign and deliver the Guarantee.

(d) A Borrower receiving a loan guaranteed by the Board under this Program shall pay a one-time guarantee fee of 0.5 percent of the amount of the principal of the loan. This fee must be paid no later than one year from the issuance of the Guarantee.

[64 FR 57933, Oct. 27, 1999, as amended at 65 FR 70294, Nov. 22, 2000; 66 FR 53080, Oct. 19, 2001]

§ 400.209 Funding for the Program.

The Act provides funding for the costs incurred by the Government as a result of granting Guarantees under the Program. While pursuing the goals of the Act, it is the intent of the Board to minimize the cost of the Program to the Government. The Board will estimate the risk posed by the guaranteed loans to the funds appropriated for the costs of the Guarantees under the Program and operate the Program accordingly.

§ 400.210 Assignment or transfer of loans.

(a) Neither the Loan Documents nor the Guarantee of the Board may be modified, in whole or in part, without